

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

CASTLE SENIOR LIVING, INC.,

Plaintiff,

Case No.: 21-CV-1040

v.

CITY OF DELAFIELD,

Defendants.

CITY OF DELAFIELD'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant, City of Delafield, by its attorneys, Crivello Carlson, S.C., answers the Plaintiff's Amended Complaint as follows:

1. Answering paragraph 1, denies.
2. Answering paragraph 2, denies.
3. Answering paragraph 3, denies.
4. Answering paragraph 4, denies.
5. Answering paragraph 5, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.
6. Answering paragraph 6, admits that the City is a municipal organization organized and existing pursuant to Wisconsin law. As further answer to the balance of plaintiff's allegations, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

7. Answering paragraph 7, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

8. Answering paragraph 8, admits that the events alleged in the complaint took place in this District. As further answer, denies the balance of the allegations.

9. Answering paragraph 9, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

10. Answering paragraph 10, admits that Wis. Stat. § 50.01(1g) sets forth a definition of “Community-based residential facility” and that Chapter DHS 83 sets forth administrative rules related to Community-based residential facilities. As further answer to the balance of plaintiff’s allegations, denies that plaintiff’s allegations are accurate or complete and, therefore, denies the same.

11. Answering paragraph 11, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

12. Answering paragraph 12, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

13. Answering paragraph 13, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

14. Answering paragraph 14, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

15. Answering paragraph 15, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

16. Answering paragraph 16, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

17. Answering paragraph 17, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

18. Answering paragraph 18, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

19. Answering paragraph 19, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

20. Answering paragraph 20, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

21. Answering paragraph 21, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

22. Answering paragraph 22, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

23. Answering paragraph 23, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

24. Answering paragraph 24, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

25. Answering paragraph 25, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

26. Answering paragraph 26, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

27. Answering paragraph 27, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

28. Answering paragraph 28, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

29. Answering paragraph 29, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

30. Answering paragraph 30, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

31. Answering paragraph 31, denies.

32. Answering paragraph 32, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

33. Answering paragraph 33, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

34. Answering paragraph 34, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

35. Answering paragraph 35, denies.

36. Answering paragraph 36, denies.

37. Answering paragraph 37, denies.

38. Answering paragraph 38, admits that the quoted language appears at Wis. Stat. § 62.23(7)(de), without the emphasis added by plaintiff. As further answer to the balance of plaintiff's allegations, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

39. Answering paragraph 39, denies.

40. Answering paragraph 40, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

41. Answering paragraph 41, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

42. Answering paragraph 42, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

43. Answering paragraph 43, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

44. Answering paragraph 44, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

45. Answering paragraph 45, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

46. Answering paragraph 46, denies.

47. Answering paragraph 47, denies.

48. Answering paragraph 48, denies.

49. Answering paragraph 49, denies.

50. Answering paragraph 50, denies.

51. Answering paragraph 51, this answering defendant realleges and incorporates all of the responses to paragraphs 1-50 above.

52. Answering paragraph 52, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

53. Answering paragraph 53, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

54. Answering paragraph 54, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

55. Answering paragraph 55 and its subparagraphs, denies.

56. Answering paragraph 56, denies.

57. Answering paragraph 57, denies.

58. Answering paragraph 58, this answering defendant realleges and incorporates all of its responses to paragraphs 1-57 above.

59. Answering paragraph 59, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

60. Answering paragraph 60, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

61. Answering paragraph 61, this answering defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted, and therefore, denies the same.

62. Answering paragraph 62 and its subparagraphs, denies.

63. Answering paragraph 63, denies.

64. Answering paragraph 64, this answering defendant realleges and incorporates all of its responses to paragraphs 1-63 above

65. Answering paragraph 65, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

66. Answering paragraph 66, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

67. Answering paragraph 67, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

68. Answering paragraph 68, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

69. Answering paragraph 69, denies.

70. Answering paragraph 70, denies.

71. Answering paragraph 71, denies.

72. Answering paragraph 72, denies.

73. Answering paragraph 73, denies.

74. Answering paragraph 74, denies that plaintiff's allegations are accurate or complete and, therefore, denies the same.

AFFIRMATIVE DEFENSES

As and for affirmative defenses to plaintiff's Complaint, the defendant submits the following:

- a. the injuries and damages sustained by the plaintiff, if any, were caused in whole or in part by the acts or omissions of the plaintiff and its failure to mitigate;
- b. the injuries and damages sustained by the plaintiff, if any, were caused in whole or in part by the acts or omissions of persons or entities other than this answering defendant;
- c. the Complaint contains claims which fail to state a claim upon which relief may be granted as against this answering defendant;
- d. this answering defendant is immune from suit under common law and statutory immunities and privileges including but not limited to discretionary, legislative and qualified immunity;

- e. plaintiff failed to state a claim for and is not legally entitled to punitive damages, compensatory damages, or attorneys' fees and costs;
- f. any and all injuries or damages sustained by the plaintiff are the result of an intervening and/or superseding cause preventing plaintiff a right of recovery against this defendant;
- g. plaintiff has failed exhaust avenues for relief and exhaust administrative remedies before filing this action in federal action;
- h. plaintiff may lack standing to bring this action;
- i. the actions of the City are legislative in character and therefore, the motives if any to take legislative actions are not subject to judicial scrutiny;
- j. to the extent plaintiff is bringing a state law claim, the claims are subject to the limitations and immunities in Wis. Stats. Sec. 893.80;
- k. to the extent plaintiff is bringing a state law claim, plaintiff may have failed to properly comply with the notice provisions contained within Wis. Stats. Sec. 893.80 as regards to the claims against this answering defendant;
- l. the City had a legitimate, non-discriminatory reason to deny the conditional use permit; and
- m. contractual obligations that run with the land may preclude plaintiff's claims and/or damages.

WHEREFORE, defendant, City of Delafield, demands judgment as follows:

- a. for a dismissal of the Plaintiff's Amended Complaint upon its merits;
- b. for the costs and disbursements of this action;
- c. for reasonable actual attorney fees per 42 USC § 1988; and
- d. for such other relief as this court deems just and equitable.

DEFENDANT HEREBY DEMANDS A 12-PERSON JURY.

Dated this 11th day of February, 2022.

BY: s/ Amy J. Doyle

AMY J. DOYLE

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STEVEN C. McGAVER

State Bar No.: 1051898

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